

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

19 CR 521 (PKC)

5 PETER BRIGHT,

6 Defendant.

Trial

7
8 New York, N.Y.
9 February 14, 2020
10:05 a.m.

10 Before:

11 HON. P. KEVIN CASTEL,

12 District Judge
13 -and a Jury-

14 APPEARANCES

15 GEOFFREY S. BERMAN

16 United States Attorney for the
17 Southern District of New York

18 BY: ALEXANDER LI

19 TIMOTHY TURNER HOWARD

20 Assistant United States Attorneys

21 DAVID E. PATTON

22 Federal Defenders of New York, Inc.
23 Attorney for Defendant

24 BY: AMY GALLICCHIO

25 ZAWADI S. BAHARANYI

Assistant Federal Defenders

Also Present:

Elizabeth Jensen, FBI

Ariella Fetman, Government Paralegal

Alondra Rayes, Defense Paralegal

Jason Fisher, Technical Support

1 (Trial resumed)

2 (In open court; jury not present)

3 THE COURT: Please be seated. Good morning.

4 Any objection to the verdict form tendered by the
5 government?

6 MS. GALLICCHIO: No, your Honor.

7 THE COURT: Okay. It's been marked as Court Exhibit
8 4, and the final instructions have been marked as Court Exhibit
9 5. They're being handed out. I will bring our jury in.

10 (In open court; jury present)

11 THE COURT: Good morning, ladies and gentlemen.

12 You'll have to excuse my voice, if it's a little bit
13 scratchy. I have something going on. We'll take a stretch
14 break now and again during the instructions.

15 So, members of the jury, you have heard all of the
16 evidence in the case, as well as the file arguments of the
17 parties. We've reached the point where you're about to
18 undertake your final function as jurors.

19 You have paid careful attention to the evidence, and I
20 am confident that you will act together with fairness and
21 impartiality to reach a just verdict in this case.

22 It has been my duty to preside over the trial and to
23 decide what testimony and evidence was relevant under the law
24 for you to consider.

25 My duty at this point is to instruct you as to the

1 law. It's your duty to accept these instructions of law and to
2 apply them to the facts as you determine them. If any attorney
3 has stated a principle of law different from any I state to you
4 now in my instructions, it is my instructions that you must
5 follow. You must not substitute your own ideas of what the law
6 is or ought to be.

7 You are not to infer from any of my questions or
8 rulings or anything else I have said or done during the trial
9 that I have any view as to the credibility of the witnesses or
10 how you should decide the case.

11 I will give you the typed text of these instructions
12 for your use in the jury room. It is possible that there is a
13 slight variation between the words, a slight or not slight
14 variation between the words, I have spoken and the typed text
15 that I will give you. It is the words I have spoken that
16 control over the typed text.

17 As members of the jury, you are the sole and exclusive
18 judges over the facts. You pass upon the evidence. You
19 determine the credibility of the witnesses. You resolve such
20 conflicts as there may be in the testimony. You draw whatever
21 reasonable inferences you decide to draw from the facts as you
22 have determined them.

23 You determine the weight of the evidence. You have
24 taken the oath as jurors, and it is your sworn duty to
25 determine the facts and follow the law as I give it to you.

1 It is the duty of the attorneys to object when the
2 other side offers testimony or other evidence that the attorney
3 believes is not is properly admissible. Therefore, you should
4 draw no inference from the fact that an attorney objected to
5 any evidence. Nor should you draw any inference from the fact
6 that I sustained or overruled an objection.

7 Your verdict must be based solely upon the evidence
8 developed at trial or the lack of evidence. The parties in
9 this case are entitled to a trial free from prejudice about a
10 party's race, religion, national origin, sex, or age. Our
11 judicial system cannot work unless you reach your verdict
12 through a fair and impartial consideration of the evidence.

13 Similarly, under your oath as jurors, you're not to be
14 swayed by sympathy. Once you let prejudice, fear, bias,
15 feelings about the nature of the crime charged, or sympathy
16 interfere with your thinking, there is a risk that you will not
17 arrive at a just and true verdict. Your verdict must be based
18 exclusively upon the evidence or the lack of the evidence.

19 The fact that the prosecution has brought in the name
20 of the United States of America entitles the government to no
21 greater and no lesser consideration than accorded to any other
22 party to a litigation. All parties, whether the government or
23 an individual, stand as equals under the law.

24 The defendant in this case, Peter Bright, has entered
25 a plea of not guilty to the indictment. The law presumes a

1 defendant to be innocent of all the charges against him.

2 The defendant is to be presumed by you to be innocent
3 through your deliberations until such time, if ever, that you,
4 as a jury, are satisfied that the government has proven
5 defendant's guilt beyond a reasonable doubt.

6 The presumption of innocence alone is sufficient to
7 require an acquittal of a defendant unless and until, after
8 careful and impartial consideration of all the evidence, you as
9 jurors are convinced unanimously of defendant's guilt beyond a
10 reasonable doubt.

11 The question naturally comes up is: What is a
12 reasonable doubt? The words almost define themselves. It's a
13 doubt founded in reason and arising out of the evidence or the
14 lack of evidence. It is a doubt that a reasonable person has
15 after carefully weighing all the evidence.

16 Proof beyond a reasonable doubt therefore must be
17 proof of such a convincing nature that a reasonable person
18 would not hesitate to rely and act upon it in the most
19 important of his or her own affairs.

20 Proof beyond a reasonable doubt is not proof beyond
21 all possible doubt. Reasonable doubt is a doubt that appeals
22 to your reason, your judgment, your experience, your common
23 sense. It is not caprice, whim, or speculation. It is not an
24 excuse to avoid the performance of an unpleasant duty. It is
25 not sympathy for the defendant.

1 The government must prove each and every element of
2 the crime charged beyond a reasonable doubt. The burden never
3 shifts to the defendant. The law never imposes upon a
4 defendant in a criminal case the burden of calling any
5 witnesses or producing any evidence.

6 Even if Mr. Bright has presented evidence in his
7 defense, as he has, it is not his burden to prove himself
8 innocent. The fact that one party called more witnesses and
9 introduced more evidence does not mean that you should find in
10 favor of that party. It is the quality of the evidence that
11 matters.

12 If, after a fair and impartial consideration of all
13 the evidence, you can honestly say that you are not satisfied
14 of the guilt of a defendant, that is, if you have such a doubt
15 as would cause you as a prudent person to hesitate before
16 acting in matters of importance to yourself, then you have a
17 reasonable doubt. In that circumstance, it's your duty to
18 return a not-guilty verdict for the defendant.

19 On the other hand, if, after a fair, impartial, and
20 careful consideration of all of the evidence, you can honestly
21 say that you are satisfied of the guilt of a defendant and that
22 you do not have a doubt that would prevent you from acting in
23 important matters in the personal affairs of your own life,
24 then you have no reasonable doubt. Under that circumstance,
25 you should return a verdict of guilty for the defendant.

1 The evidence in this case is the sworn testimony of
2 the witnesses, the exhibits received into evidence, and the
3 stipulations made by the parties.

4 By contrast, the questions of a lawyer are not
5 evidence. It is the witness' answers that are evidence, not
6 the questions. It's the answer, together with the question,
7 that makes it evidence.

8 Testimony that has been stricken or excluded by me is
9 not evidence and may not be considered by you in rendering your
10 verdict. If I have instructed you that evidence is received
11 for only a limited purpose, which I did with certain evidence,
12 then it may be considered only for that purpose.

13 Arguments by lawyers are not evidence because the
14 lawyers are not witnesses. What the lawyers have said to you
15 in their opening statements and in their summations is intended
16 to help you understand the evidence. If, however, your
17 recollection of facts differs from the lawyers' statements,
18 it's your recollection that controls.

19 To constitute evidence, exhibits must first be
20 admitted or received in evidence. Exhibits marked for
21 identification but not admitted are not evidence. Nor are
22 materials brought forth only to refresh a witness'
23 recollection. It is for you alone to decide the weight, if
24 any, to be given to the testimony you have heard and the
25 exhibits you have seen.

1 Generally, there are two types of evidence that you
2 may consider in reaching your verdict. One type is direct
3 evidence. Direct evidence is when a witness testifies about
4 something he or she knows by virtue of his or her own senses,
5 something he or she has seen, felt, touched, or heard.

6 Circumstantial evidence is evidence from which you may
7 infer the existence of certain facts. Let me give you an
8 example to help you understand what is meant by "circumstantial
9 evidence."

10 So this morning, we have a bright sun out. It is
11 cold, and you can see the sun through the window. But I want
12 you to imagine that there were dark, heavy draperies in this
13 courtroom that covered all light coming into the courtroom.
14 You couldn't see whether it was day or night or what the
15 weather was.

16 And now I want you to consider that the back doors of
17 the courtroom opened and somebody came in carrying an umbrella
18 that appeared to be wet and, a few moments later, another
19 person came in with a raincoat on and was brushing off the
20 shoulders of the raincoat.

21 Now, remember. You can't see outside. So you don't
22 know whether it's sunny or dark or what the weather is. But
23 from the combination of facts that I have described for you, it
24 would be reasonable for you to infer that it had been raining.

25 That's what circumstantial evidence is. It's

1 inferring on the basis of reason and experience and common
2 sense from one established fact the existence or nonexistence
3 of some other fact.

4 Circumstantial evidence is of no less value than
5 direct evidence. The law makes no distinction between direct
6 evidence and circumstantial evidence that is relevant in this
7 case. It simply requires that your verdict must be based on
8 all the evidence presented.

9 You have had the opportunity to observe all the
10 witnesses. It is now your job to decide how believable each
11 witness was in his or her testimony. You are the sole judges
12 of the credibility of each witness and of the importance of his
13 or her testimony.

14 You should carefully scrutinize all of the testimony
15 of each witness, the circumstances under which each witness
16 testified, the impression the witness made when testifying, and
17 any other matter in evidence that may help you decide the truth
18 and the importance of each witness' testimony.

19 In other words, in assessing credibility, you may size
20 up a witness in light of his or her demeanor, the explanations
21 given, and all of the other evidence in the case. In making
22 your credibility determinations, use your common sense, your
23 good judgment, and your everyday experiences in life.

24 If you believe that a witness knowingly testified
25 falsely concerning any important matter, whether at trial or in

1 a prior proceeding, you may distrust the witness' testimony
2 concerning other matters. You may reject all of the testimony,
3 or you may accept such parts of the testimony that you believe
4 are true and give it such weight as you think it deserves.

5 In deciding whether to believe a witness, you may take
6 account of any evidence of hostility or affection that the
7 witness may have towards the defendant or the government.

8 You may consider any evidence that a witness may
9 benefit in some way from the outcome of the case and any
10 loyalty, incentive, or motive that might cause a witness to
11 shade the truth.

12 You should carefully scrutinize all of the testimony
13 of each witness, the circumstances under which each witness
14 testified, and any other matter in evidence that may help you
15 decide the truth and importance of each witness' testimony.

16 In deciding whether or not a witness was truthful, ask
17 yourself: How did the witness appear? Was the witness candid,
18 frank, and forthright, or did the witness seem evasive or
19 suspect in some way?

20 How did the way the witness testified on direct
21 examination compare with how the witness testified on
22 cross-examination? Was the witness consistent or
23 contradictory? Did the witness appear to know what he or she
24 was talking about? Did the witness have the opportunity to
25 observe the facts he or she testified about?

1 It is your duty to consider whether the witness has
2 permitted any bias or interest to color his or her testimony.
3 In short, if you find that a witness is biased, you should view
4 his or her testimony with caution, weigh it with care, and
5 subject it to close and searching scrutiny.

6 Of course, the mere fact that a witness is interested
7 in the outcome of the case does not mean that he or she has not
8 told the truth. It is for you to decide, from your
9 observations and applying your common sense and other
10 experience and all of the other considerations mentioned,
11 whether the possible interest of any witness has intentionally
12 or otherwise colored or distorted his or her testimony.

13 You're not required to disbelieve an interested
14 witness. You may accept as much of his or her testimony as you
15 deem reliable and reject as you much as you deem unworthy of
16 acceptance.

17 You have heard the testimony of law enforcement
18 officers and a government employee. The fact that a witness
19 may be employed by the federal, state, or local government as a
20 law enforcement officer or a government employee does not mean
21 that his or her testimony is deserving of more or less
22 consideration or greater or lesser weight than that of an
23 ordinary witness.

24 It is fair for you to consider whether the testimony
25 of a law enforcement witness has been colored by a personal or

1 professional bias or interest in the outcome of the case.

2 It is your decision, after reviewing all of the
3 evidence, whether to accept the testimony of the law
4 enforcement witnesses and government employee witness and to
5 give that testimony whatever weight, if any, you find it
6 deserves.

7 The testimony of a witness may be discredited by
8 showing that the witness testified inconsistently concerning a
9 material matter or by evidence that at some other time, the
10 witness said or did something or failed to say or do something
11 which is inconsistent with the testimony the witness gave at
12 this trial.

13 Evidence of a prior inconsistent statement may not be
14 considered by you as affirmative evidence of the fact asserted
15 in the statement or the defendant's guilt.

16 Evidence of the prior inconsistent statement was
17 placed before you for the more limited purpose of helping you
18 decide whether to believe the trial testimony of the witness
19 who may have contradicted himself or herself.

20 If you find that the witness made an earlier statement
21 that conflicts with his or her trial testimony, you may
22 consider that fact in deciding how much of his or her trial
23 testimony, if any, to believe.

24 If you believe that a witness has been discredited in
25 this manner, it is exclusively your right to give the testimony

1 of that witness whatever weight you think it deserves.

2 In making this determination, you may consider whether
3 the witness purposely made a false statement or whether it was
4 an innocent mistake, whether the inconsistency concerns an
5 important fact or whether it had to do with a small detail,
6 whether the witness had an explanation for the inconsistency,
7 and whether the explanation appealed to your common sense.

8 You have heard evidence of certain statements made by
9 the defendant to the FBI. Ultimately, you are to give the
10 statements such weight, if any, as you feel they deserve, in
11 light of all the circumstances.

12 You have heard recordings of the defendant's
13 post-arrest statement to the FBI. In these recordings, only
14 Mr. Bright's statements are evidence. The statements and
15 questions of the FBI agents are not evidence in and of
16 themselves.

17 Among the exhibits in evidence, some documents are
18 redacted. You'll remember I told you that "redacted" means
19 that part of the document was covered. You are to concern
20 yourself only with the part of the item that has been admitted
21 into evidence. You should not consider any possible reason why
22 the other part of it was covered.

23 In this case, you've heard evidence in the form of
24 stipulations of fact. A stipulation of fact is an agreement
25 between the parties that a certain fact is true. You must

1 regard such agreed-upon fact as true. The weight or importance
2 of the fact, however, is a matter for you, the jury, to decide.

3 You have heard testimony about evidence seized or
4 obtained in connection with searches conducted by law
5 enforcement officers or otherwise obtained by law enforcement.
6 Evidence obtained by law enforcement in this case was properly
7 admitted and may be properly considered by you. Such searches
8 in this case were appropriate law enforcement actions.

9 Whether you approve or you disapprove of how this
10 evidence was obtained should not enter into your deliberations
11 because I now instruct you that the government's use of this
12 evidence is entirely lawful.

13 You must therefore, regardless of your personal
14 opinions, give this evidence full consideration, along with all
15 other evidence in this case, in determining whether the
16 government has proved the defendant's guilt beyond a reasonable
17 doubt.

18 There is no legal requirement that law enforcement
19 agents investigate crimes in a particular way or that the
20 government prove its case through any particular means.

21 While you're to carefully consider the law enforcement
22 evidence introduced by the government, you are not to speculate
23 as to why they used the techniques they did or why they did not
24 use other techniques.

25 The government is not on trial. Law enforcement

1 techniques are not your concern. Your concern is to determine
2 whether, on the evidence or the lack of evidence, the
3 defendant's guilt has been proven beyond a reasonable doubt.

4 You've heard evidence during the course of this trial
5 that this case arose from a so-called "undercover operation" by
6 law enforcement. The government is permitted to rely on such
7 investigative techniques. Any opinions that you may have about
8 the use of undercover agents should not enter into your
9 deliberations in any way.

10 You've heard evidence during the trial that witnesses
11 have discussed the facts of the case and their testimony with
12 lawyers before the witness appeared in court. You may consider
13 that fact when you're evaluating a witness' credibility.

14 There is nothing either unusual or improper about a
15 witness meeting with lawyers before testifying so that the
16 witness can be aware of the subjects he or she will be
17 questioned about, focus on those subjects, and have the
18 opportunity to review relevant exhibits before being questioned
19 about them.

20 Such consultation helps conserve your time and the
21 Court's time. In fact, it would be unusual for a lawyer to
22 call a witness without such consultation.

23 You have heard testimony from what is called an
24 expert witness, Dr. Cantor. An expert witness is a witness
25 who, by education or experience, has acquired learning or

1 expertise in a specialized area of knowledge. Such witnesses
2 may give testimony as to relevant matters to which they profess
3 to be an expert and give their reasons for the expression of
4 their testimony.

5 Expert testimony is presented to you on the theory
6 that someone who is experienced in a specialized field can
7 assist you in understanding the evidence or in reaching an
8 independent decision on the facts.

9 Your role in judging credibility applies to experts,
10 as well as to other witnesses. You should consider the
11 expert's testimony which was received in evidence and give it
12 as much or as little weight as you think it deserves.

13 If you believe that the testimony of an expert was not
14 based on sufficient educational experience or on sufficient
15 data or if you conclude that the trustworthiness or credibility
16 of an expert is questionable or if the testimony is outweighed,
17 in your judgment, by other evidence in the case, then you might
18 disregard such portion as, in your judgment, is not in accord
19 with the evidence.

20 On the other hand, if you find the testimony is based
21 on sufficient data, education, and experience and the other
22 evidence does not give you reason to doubt the testimony, you
23 would be justified in placing reliance on the testimony.

24 The government has offered evidence that on different
25 occasions, the defendant may have engaged in conduct similar to

1 the charge in the indictment. Let me remind you that the
2 defendant is not on trial for committing acts that are not
3 alleged in the indictment.

4 Accordingly, you may not consider the evidence of the
5 defendant's prior conduct as a substitute for proof that the
6 defendant committed the crime charged. Nor may you consider
7 this evidence as proof that the defendant has a criminal
8 personality or bad character.

9 The evidence of the other similar acts was admitted
10 for a much more limited purpose, and that was for you to decide
11 whether it has any bearing on the defendant's intent at the
12 time of the charged crime. And you may consider it only for
13 that limited purpose.

14 If you determine that the defendant committed the acts
15 charged in the indictment and the similar acts as well, then
16 you may -- but you need not -- draw an inference that in doing
17 the acts charged in the indictment, the defendant acted
18 knowingly and intentionally and not because of some mistake,
19 accident, or other innocent reasons.

20 Evidence of similar acts may not be considered by you
21 for any other purpose. Specifically, you may not use this
22 evidence to conclude that because the defendant committed the
23 other act or acts, he must also have committed the acts charged
24 in the indictment.

25 The defendant in a criminal case never has a duty to

1 testify or to come forward with any evidence. That is because,
2 as I've instructed you, the burden of proof beyond a reasonable
3 doubt remains with the government at all times and the
4 defendant is presumed innocent and he is never required to
5 prove that he is innocent.

6 In this case, the defendant did testify, and he was
7 subject to cross-examination, like any other witness. You
8 should examine and evaluate his testimony just as you would the
9 testimony of any witness.

10 I instruct you that anything you may have seen or
11 heard about the case outside the courtroom is not evidence and
12 must be disregarded. Indeed, as I have instructed you
13 throughout this case, you may not read, view, or listen to any
14 media or press report or internet or social media posting about
15 this case or about the people or issues referred to during the
16 trial.

17 Your verdict must be based solely on the evidence or
18 lack of evidence that came out in this courtroom and the
19 Court's instructions on the law.

20 Ladies and gentlemen, you're welcome to stand up and
21 stretch.

22 (Pause)

23 THE COURT: With these instructions in mind, I'll turn
24 to the substantive law to be applied in this case.

25 The defendant, Peter Bright, has been formally charged

1 in what is called an indictment. An indictment is simply an
2 accusation. It is no more than the means by which a criminal
3 case is started.

4 It is not evidence. It is not proof of defendant's
5 guilt. It creates no presumption and permits no inference that
6 a defendant is guilty. You are to give no weight to the fact
7 that an indictment has been returned against the defendant.

8 I will give you a copy of the indictment which you
9 will have with you in the jury room.

10 Let me summarize the charge though. The indictment
11 charges that from on or about April 18, 2019, up to and
12 including on or about May 22, 2019, in the Southern District of
13 New York and elsewhere -- the Southern District includes
14 Manhattan and the Bronx and Westchester, Dutchess, Orange,
15 Rockland, Putnam, and Sullivan Counties -- the defendant
16 willfully and knowingly used a facility and means of interstate
17 and foreign commerce to persuade, induce, entice, and coerce an
18 individual who has not attained the age of 18 years to engage
19 in sexual activity for which a person can be charged with a
20 criminal offense and attempted to do the same, namely, that the
21 defendant used computers and/or telephones to communicate with
22 an undercover FBI agent about arranging to engage in sexual
23 activity with a purported nine-year-old boy and seven-year-old
24 girl and attempted to meet with the boy and girl to engage in
25 sexual activity in violation of New York Penal Law.

1 So that's the charge. That's the allegation.
2 Mr. Bright has pleaded not guilty and is presumed innocent of
3 the charge. In order for you to convict the defendant of the
4 charge, it is necessary for to you find that the government has
5 proven each and every element of the charge beyond a reasonable
6 doubt.

7 Now, to sustain its burden of proof with respect to
8 the charge of attempting to persuade, induce, entice, or coerce
9 a minor under 18 years of age to engage in illegal sexual
10 activity, the government must prove beyond a reasonable doubt
11 the following four elements.

12 Now, I'm going to give you what the four are, and then
13 I'm going to walk you through each of the four.

14 The first is that the defendant knowingly used a
15 facility or means of interstate commerce; second, that the
16 defendant knowingly persuaded, induced, enticed, or coerced an
17 individual to engage in sexual activity or attempted to do so.

18 Third, that the sexual activity would violate New York
19 state law; and fourth, that the individual was less than 18
20 years old at the time of the acts alleged in the indictment or
21 that the defendant believed the defendant was less than 18
22 years old.

23 The first element that the government must prove
24 beyond a reasonable doubt is the defendant used a facility of
25 interstate or foreign commerce as alleged in the indictment.

1 Transmission of communication by means of a telephone
2 or the internet constitutes the use of a facility of interstate
3 commerce, regardless of whether the communication actually
4 crossed a state line.

5 However, you must find beyond a reasonable doubt that
6 the specific communication in question was actually transmitted
7 by means of a telephone or the internet.

8 The second element the government must prove beyond a
9 reasonable doubt is that the defendant knowingly persuaded,
10 induced, enticed, or coerced someone to engage in sexual
11 activity or that he attempted to do so. We'll talk about who
12 the "someone" must be in a moment. But for the moment, there
13 must be that element.

14 The government does not have to prove that the
15 defendant communicated directly with the person. Communication
16 with a third party whose role was to persuade, induce, entice,
17 or coerce the person is sufficient to establish this element.

18 To act knowingly is to act voluntarily and purposely
19 and not by accident or mistake. The terms "persuade,"
20 "induce," "entice," or "coerce" are words of common usage, and
21 you some apply their common or everyday meaning to the evidence
22 in this case.

23 Now, science, as we talked about during jury
24 selection, has not devised yet a manner of looking into a
25 person's mind and knowing what that person is thinking. Rarely

1 is direct proof of state of mind available, and direct proof is
2 not required.

3 However, you do have before you evidence of certain
4 acts alleged to have taken place and certain physical evidence
5 that may or may not help you infer what was going on in
6 someone's mind.

7 Mere intention to commit a specific act does not
8 amount to an attempt. In order to establish the second
9 element, the government must prove beyond a reasonable doubt:

10 First, that the defendant intended to persuade,
11 induce, entice, or coerce a minor to engage in a sexual act;
12 and second, that the defendant willfully took some action that
13 was a substantial step in an effort to bring about or
14 accomplish the crime.

15 In determining whether the actions amounted to a
16 substantial step towards the commission of the crime, you must
17 distinguish between mere preparation, on the one hand, and the
18 actual doing of the criminal deed, on the other.

19 Mere preparation, which may consist of planning the
20 offense or devising, obtaining, or arranging the means for its
21 commission, is, without more, not an attempt, although some
22 preparations may amount to an attempt.

23 The acts of a person who intends to commit a crime
24 constitute an attempt when the acts themselves clearly indicate
25 a willful intent to commit the crime and the acts are a

1 substantial step in a course of conduct planned to culminate in
2 the commission of the crime.

3 There is no requirement that the attempt be successful
4 or that the defendant actually have carried out the crime he
5 was trying to commit.

6 The third element that the government must prove
7 beyond a reasonable doubt is that the sexual activity, if
8 completed, would violate New York state law.

9 The indictment alleges that the defendant attempted to
10 persuade a person to engage in sexual activity in violation of
11 New York Penal Law, rape in the third degree, rape in the
12 second degree, rape in the first degree, sexual abuse in the
13 third degree, sexual abuse in the second degree, and sexual
14 abuse in the first degree.

15 A person commits rape in the third degree when he or
16 she engages in sexual intercourse with another person, the
17 other person is less than 17 years old, and the actor is 21
18 years old or older.

19 A person commits rape in the second degree when he or
20 she engages in sexual intercourse with another person, the
21 other person is less than 15 years old, and the actor is 18
22 years old or older.

23 A person commits rape in the first degree when he or
24 she engages in sexual intercourse with a person who is less
25 than 11 years old.

1 A person commits sexual abuse in the third degree when
2 he or she subjects another person to sexual contact without the
3 other person's consent.

4 A person commits sexual abuse in the second degree
5 when he or she subjects another person to sexual contact and
6 the other person is less than 14 years old.

7 A person commits sexual abuse in the first degree when
8 he or she subjects another person to sexual contact and the
9 other person is less than 11 years old.

10 A person also commits sexual abuse in the first degree
11 when he or she subjects another person to sexual contact, the
12 other person is less than 13 years old, and the actor is 21
13 years old or older.

14 Under New York state law, "sexual contact" means any
15 touching of the sexual or other intimate parts of a person for
16 the purpose of gratifying the sexual desire of the other party.

17 It includes the touching of the actor by the victim,
18 as well as the touching of the victim by the actor, whether
19 directly or through clothing, as well as the emission of
20 ejaculate by the actor upon any part of the victim, clothed or
21 unclothed.

22 Under New York state law, sexual intercourse has its
23 ordinary meaning and occurs upon any penetration, however
24 slight.

25 Under New York state law, for a sexual act to be

1 criminal, it must be committed without the consent of the
2 victim. Under New York law, the lack of consent can result
3 from an incapacity to consent. A person is deemed incapable of
4 consent, under New York law, when he or she is under 17 years
5 of age.

6 The final element that the government must prove
7 beyond a reasonable doubt is that the person was actually under
8 the age of 18 or that the defendant believed the person was
9 under the age of 18.

10 It is not a defense to the charge that the person was
11 not in fact under 18 years old, as long as the defendant
12 believed him or her to be under 18 years of age.

13 In addition to all of the elements I've described, you
14 must consider the issue of venue. Venue is whether any fact in
15 furtherance of the crime charged occurred in the Southern
16 District of New York, which, as I mentioned, includes
17 Manhattan, the Bronx, Westchester, Rockland, Putnam, Dutchess,
18 Orange, and Sullivan Counties and bodies of water and bridges
19 over bodies of water within the boundaries of Manhattan, the
20 Bronx, Brooklyn, Queens, and Staten Island.

21 The government does not need to prove that the crime
22 was committed in the Southern District of New York or that the
23 defendant was present here. It's sufficient that any act in
24 furtherance of the crime charged occurred here.

25 Unlike the other elements of the charge, the

1 government need only prove venue by a preponderance of the
2 evidence, not beyond a reasonable doubt.

3 A preponderance of the evidence means that it is more
4 likely than not that any act in furtherance of the crime
5 occurred in the Southern District of New York.

6 If you find that the government failed to prove the
7 venue requirement by a preponderance of the evidence, then you
8 must find the defendant not guilty.

9 You will note that the indictment alleges that certain
10 acts occurred on or about various dates. It is not essential
11 that the government prove that the defendant attempted to
12 entice a child on these particular dates. The law requires
13 only a substantial similarity between the dates alleged in the
14 indictment and the dates established by the evidence.

15 The defense contends that Mr. Bright never intended to
16 entice an actual seven-year-old and nine-year-old to engage in
17 illegal sexual activity. The defense contends that Mr. Bright
18 believed that he and the undercover agent were engaged in
19 age-based role play or age play until the agent sent Mr. Bright
20 photographs of what appeared to be children.

21 The defense contends that Mr. Bright met with the
22 undercover agent with the intent to gather evidence to report
23 her to law enforcement, not with the intent to engage in
24 illegal sexual activity with the purported children.

25 Ladies and gentlemen, stand up and stretch if you'd

1 like.

2 (Pause)

3 THE COURT: The possible punishment of a defendant, in
4 the event of conviction, is not a proper consideration for the
5 jury and should not in any way enter into or influence your
6 deliberations.

7 The duty of imposing a sentence is on the Court and
8 the Court alone, the judge. Your function is to weigh the
9 evidence and to determine whether the defendant has been proven
10 guilty based upon the evidence and the law or has not been
11 proven guilty.

12 Therefore, I instruct you not to consider possible
13 punishment in any way in your deliberations in this case.

14 I will allow the exhibits actually received into
15 evidence to go with you into the jury room. If you want to
16 hear any audio recordings, let me know which one you want to
17 hear, and I'll bring you back into the courtroom, and it will
18 be played in the courtroom.

19 If you want any of the testimony read back, please
20 send out a note specifying what you want to hear, and we will
21 bring you back to the courtroom to read it back to you. Please
22 be as specific as possible in making such a request.

23 If you want any further explanation of the law as I've
24 explained it to you, you may also request that. Your request
25 for testimony, in fact, any communication with the Court,

1 should be made to me in writing, signed by your foreperson, and
2 given to the deputy marshal outside the courtroom.

3 In any event, do not tell me or anyone else how the
4 vote stands on any issue, in other words, what the vote
5 breakdown is, unless and until you reach a unanimous verdict.

6 I'm also sending a copy of the indictment, as I said,
7 and that's merely an accusation, not evidence of anything.

8 Some of you have taken notes periodically throughout
9 the trial. Notes that any of you may have made may not be
10 given any greater weight or influence in determination of the
11 case than the recollections or impressions of other jurors,
12 whether from notes or from memory, with respect to the evidence
13 presented or what conclusions, if any, should be drawn from the
14 evidence.

15 Any difference between a juror's recollection and
16 another juror's notes should be settled by asking to have the
17 court reporter read back the transcript, for it is the court
18 record, rather than any juror's notes, upon which the jury must
19 base its determination of the facts and its verdict.

20 In a few moments, you'll retire to decide the case.
21 It is your duty as jurors to consult with one another and to
22 deliberate with a view to reaching an agreement. Each of you
23 must decide the case for himself or herself, but you should do
24 so only after consideration of the case with your fellow
25 jurors.

1 You should not hesitate to change an opinion when
2 convinced that it is erroneous. Your verdict must be
3 unanimous, but you're not bound to surrender your
4 conscientiously held beliefs concerning the effect or weight of
5 the evidence for the mere purpose of returning a verdict solely
6 because of the opinion of other jurors.

7 Discuss and weigh your respective opinions
8 dispassionately, without regard to sympathy, without regard to
9 prejudice or favor for either party, and adopt the conclusion
10 that in your good conscience appears to be in accordance with
11 the evidence and the Court's instructions on the law.

12 Please remember. You are not partisans. You are
13 judges of the fact, not representatives of a constituency or
14 cause.

15 If at any point you find yourself divided, do not
16 inform the Court of how the jurors are split. Once you have
17 reached a verdict, do not announce what the verdict is until I
18 ask you to do so in this courtroom.

19 Once you get into the jury room, you must select a
20 foreperson who will be responsible for signing all
21 communications to the Court on behalf of the jury and for
22 handing them to the deputy marshal during your deliberations.
23 This should not be understood to mean that an individual cannot
24 send the Court a note, should the foreperson refuse to do so.

25 There is a verdict form for you to use to record your

1 decision. After you've reached a verdict, the foreperson
2 should fill out one verdict form. I think I'm going to give
3 you multiple copies, but one copy gets filled out and signed by
4 the foreperson with the date put on it.

5 Give a note to the deputy marshal that you have
6 reached a verdict. In that note, do not say what the verdict
7 is. The Court will then call you back into the courtroom for
8 the verdict to be read aloud.

9 I will stress that each of you must be in agreement
10 with the verdict as announced in court. Once your verdict is
11 announced by your foreperson in open court and officially
12 recorded, it cannot ordinarily be revoked.

13 Your function now is to weigh the evidence in this
14 case and to determine whether the government has or has not
15 proven beyond a reasonable doubt the guilt of Defendant Peter
16 Bright with respect to the count in the indictment.

17 You must base your verdict solely on the evidence or
18 the lack of evidence and these instructions on the law. I'm
19 sure that if you listen to the views of your fellow jurors and
20 if you apply your own common sense, you will reach a verdict in
21 accordance with the evidence and the law.

22 Finally, let me state that your oath sums up your
23 duty. And that is: Without fear or favor to anyone, you will
24 well and truly try the issues, based solely upon the evidence
25 or lack of evidence and the Court's instructions as to the law.

1 Ladies and gentlemen, that concludes my instructions.
2 You may stand up and stretch. Don't talk about the case yet.
3 I'm going to see the lawyers at sidebar, and then I'll give you
4 a further instruction.

5 (Continued on next page)
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1 (At sidebar)

2 THE COURT: Anything from the government?

3 MR. LI: No, your Honor.

4 THE COURT: Anything from the defendant?

5 MS. GALLICCHIO: No, your Honor.

6 THE COURT: All right. This is what I propose to do:
7 I'm going to tell the alternate jurors that they're still on
8 jury duty; that they're not to discuss the case among
9 themselves or with anyone or read anything about the case,
10 because they're subject to recall, but to go about their daily
11 lives otherwise. And that when a verdict is returned, we will
12 let them know.

13 All right?

14 MR. LI: Yes.

15 MS. GALLICCHIO: That's fine.

16 THE COURT: You may return to your seats.
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1 (In open court; jury present)

2 THE COURT: Juror number 13, where are you? Juror
3 number 14, 15, juror number 16, juror number 17, juror number
4 18, you're still on jury duty in this case. You are subject to
5 being recalled in this case if there were some reason that one
6 of the other jurors could not continue.

7 So you're to go about your daily lives but continue to
8 follow the instructions that I have given to you as jurors, and
9 they include that you may not discuss the case among yourselves
10 or with any person or communicate about the case or do any
11 research about the case.

12 When the jury reaches a verdict or is otherwise
13 discharged in this case, we will telephone you so that you know
14 you are released of that restriction. But you have my
15 admiration and respect and the gratitude of the entire judicial
16 system for your attention to this case and your service in this
17 case as a juror.

18 So we will all stand as you proceed to the jury room,
19 and I would ask you to collect your belongings and then depart
20 the jury room because the regular jurors will be entering, and
21 they will then begin their deliberations.

22 We now stand for you.

23 (In open court; alternate jurors not present)

24 THE COURT: Please be seated.

25 Will the deputy marshal please come forward to have

1 the oath administered.

2 (Court security officer sworn)

3 THE COURT: Ladies and gentlemen, you may now discuss
4 the case among yourselves. I'm just going to ask the marshal
5 to check that our alternates have departed, and then you may go
6 in.

7 We have the exhibits, and we have the typed text of
8 the charge which we're going to give you and the verdict
9 sheets. We have several copies of the indictment and of the
10 charge and, as I said, of the verdict sheet. We also have the
11 exhibits received into evidence.

12 Have they been agreed upon?

13 MR. LI: Yes, your Honor.

14 MS. GALLICCHIO: Yes, your Honor.

15 THE COURT: So, madam deputy, if you'll hand that to
16 one of the jurors.

17 (Pause)

18 THE COURT: You may retire to the jury room.

19 (At 11:05 a.m., the jury retired to deliberate)

20 THE COURT: We are in recess. Thank you.

21 (Recess pending verdict)

1 AFTERNOON SESSION

2 3:30 p.m.

3 (In open court; jury not present)

4 THE COURT: All right. Please be seated.

5 The jury's note of 2:48 p.m. has been marked as Court
6 Exhibit 6.

7 Has the government received a copy of the note?

8 MR. LI: Yes, your Honor.

9 THE COURT: Have you reviewed it?

10 MR. LI: We have, your Honor.

11 THE COURT: The same question for the defense.

12 MS. GALLICCHIO: Yes and yes.

13 THE COURT: All right. I want to read you something,
14 and I want to hear from both sides on it, and then we'll see
15 where we go:

16 "The Court has received the jury's note of 2:48 p.m.
17 and instructs you as follows: The law makes it a crime to use
18 a facility or means of interstate commerce to knowingly
19 persuade, induce, entice, or coerce any individual who meets
20 the age limitations and requirements on which you have received
21 instructions to engage in any sexual activity for which any
22 person can be charged with a criminal offense or 'attempts to
23 do so.'

24 "Persuade, induce, entice, or coerce have the same
25 meaning that they have in everyday usage. Every one of these

1 four terms suffices for the purposes of the statute, provided
2 that all other elements are proven.

3 "The law does not require that any 'sexual activity'
4 actually occur if a person knowingly persuades, induces,
5 entices, or coerces a person to engage in any sexual activity.
6 For example, one could knowingly entice a person to eat a piece
7 of candy, even though the person never eats the candy.

8 "Attempt is a different concept. To prove that one
9 knowingly attempted to persuade, induce, entice, or coerce
10 requires proof that the person took a substantial step towards
11 committing the crime.

12 "A substantial step must be something more than mere
13 preparation yet may be less than the last act necessary before
14 the actual commission of the substantive crime. It is an act
15 that strongly shows the firmness of the defendant's intent to
16 commit the actual crime.

17 "This note must be read in the context of all of the
18 instructions the Court has previously given you, including
19 those on the elements of the crime and burden of proof."

20 Let me hear from the government.

21 MR. LI: The government agrees with the Court's
22 proposed instruction.

23 THE COURT: Let me hear from the defense.

24 MS. GALLICCHIO: Your Honor, may I have just a moment?

25 THE COURT: Sure. Take a moment.

1 Actually, I'm going to ask my deputy to make a copy
2 for each side. You can look at it.

3 (Pause)

4 THE COURT: I should note for the record that among
5 the precedence that I've looked at in framing this are
6 *United States v. Desposito*, 704 Fed.3d 221.

7 MS. BAHARANYI: Your Honor, we have one small request
8 to modify.

9 THE COURT: Sure.

10 MS. BAHARANYI: In the paragraph beginning with:
11 "Attempt is a different concept," we'd say: "To prove that one
12 knowingly attempted to persuade, induce, entice, or coerce
13 requires proof that the person had the intent to do so and took
14 a substantial step towards committing the crime." I think it's
15 just adding in that intent element.

16 THE COURT: Here is the question I'm going to ask you:
17 Had the intent to do what?

18 MS. BAHARANYI: Had the intent to persuade, induce,
19 entice, or coerce because they need that intent. He needs to
20 intend to persuade, induce, entice, or coerce and take a
21 substantial step towards that. I think it might address the
22 jurors' hangup in their question.

23 The second part of the question is: "How does this
24 correlate with an attempt to perform, persuade, induce, entice,
25 or coerce?" If we incorporate that language, it might clarify

1 it for them better.

2 THE COURT: How does "knowingly" factor in with the
3 intent requirement?

4 Isn't that the required intent? And I've defined
5 "knowingly."

6 MS. BAHARANYI: Your Honor, I'm trying to be sort of
7 as responsive as possible.

8 THE COURT: By the way, these are not easy questions,
9 including the question the jury has asked. And that's not our
10 fault, anyone in this courtroom. The reality is that the
11 underlying crime can be committed without sexual activity
12 actually taking place.

13 Now get your mind to consider what's an attempt to do
14 that. It's not an easy concept. I get it. But the statute is
15 quite clear. It's not like the government is trying to ingraft
16 "attempt" into the statute. Congress put it right in the
17 statute.

18 (Pause)

19 THE COURT: I may have an idea that picks up your
20 thought, but I just want to play with it. And you can continue
21 to think about it for a moment, and we'll see where we all wind
22 up.

23 (Pause)

24 THE COURT: Let me try this out. So the proposal is:
25 "Attempt is a different concept," and I would strike on that

1 first line the words "one knowingly" and insert "a person."

2 So "To prove that a person attempted to persuade,
3 entice, or coerce requires proof that with the requisite state
4 of mind on which the Court has instructed you, the person took
5 a substantial step towards committing the crime."

6 And then it would continue as it reads: "With the
7 requisite state of mind that the Court has instructed you, the
8 person has committed a substantial step towards committing a
9 crime."

10 MS. BAHARANYI: Your Honor, I think we're on the same
11 page. I was just saying maybe we would clarify that the state
12 of mind is intent.

13 THE COURT: That's where we parted ways before because
14 the statute uses the word "knowingly." I've instructed them on
15 the intent. In fact, if you look at the charge, the four
16 elements, while I'm only going to read the first two because
17 they're the only ones that have a state-of-mind component,
18 first, that the defendant knowingly used a facility or means of
19 interstate commerce; second, that the defendant knowingly
20 persuaded, induced, enticed, or coerced an individual to engage
21 in any sexual activity or attempted to do so. Then we talk
22 about violation of New York law and the 18-year-old and the
23 third and the fourth.

24 I just put in the word "knowingly." What I'm doing
25 now is just taking out the simple word "knowingly" and poring

1 in a reference to everything I've told them about state of
2 mind.

3 Your point was that "knowingly" didn't capture enough.
4 And I say to you, "intent" doesn't capture enough. It's the
5 full instruction they should focus on.

6 MS. BAHARANYI: Your Honor, the bottom of page 24 of
7 the instruction where it says: "First, that the defendant
8 intended to persuade, induce, entice, or coerce a minor to
9 engage in a sexual act," and the second part obviously is the
10 substantial step. I think that's the part we were trying to
11 incorporate there, just to clarify.

12 THE COURT: I got it. And I'm doing it by
13 incorporating all what you've been instructed about the state
14 of mind. You have to have all of that, all of the instructions
15 and all the qualifications that I've already told them about
16 state of mind, without trying to encapsulate it in one single
17 word, plus what I'm saying here now which may be somewhat
18 different.

19 MS. BAHARANYI: Very well, your Honor.

20 THE COURT: Is it acceptable to the defendant?

21 MS. BAHARANYI: Yes. Thank you.

22 THE COURT: Is it acceptable to the government?

23 MR. LI: Yes, your Honor.

24 THE COURT: All right. I also notice that I think I
25 had some bad grammar there on the second line of the paragraph

1 beginning with: "Persuade." I think it should be these four
2 terms "suffice," not "suffices."

3 Let me change that, and let's see what we've got.
4 Actually, I'm going to change that insert with the requisite
5 state of mind, etc. I'll put it after the word "person"
6 because it seems to make more sense there.

7 (Pause)

8 THE COURT: All right. I am signing it and dating it.
9 And I'm going to have the marshal bring it into the jury room,
10 a copy of it, an identical copy, because that's going to stay
11 with the jury. That's why I will do an identical conformed
12 copy that will go into the jury room.

13 Anything further?

14 MS. GALLICCHIO: No, your Honor.

15 MR. LI: No, your Honor.

16 THE COURT: All right. Thank you all very much.

17 (Jury deliberations resumed at 3:55 p.m.)

18 (In open court; jury not present)

19 THE COURT: All right. I'm going to bring our jurors
20 in, and I'm going to tell them that they're free to go home.
21 I'll give them instructions, as I do at the end of the day.
22 And of course they'll be coming back on Tuesday.

23 I'll tell them that if they want to stay longer, just
24 send out a note saying that, and we'll stay for a reasonable
25 period of time, period.

1 (In open court; jury present)

2 THE COURT: Please be seated, ladies and gentlemen.

3 Good afternoon.

4 Will the foreperson please identify themselves.

5 Great.

6 So with future notes, please sign them and put your
7 juror number underneath them. Sign them, date them, and put
8 your juror number underneath.

9 You're juror number 1. Just sign and put the date.
10 So you sign and date all the notes. Okay?

11 THE FOREPERSON: Sure.

12 THE COURT: So here is where we are. I'm going to
13 give you the choice -- and you're not going to decide here.
14 You're going to decide inside -- whether you'd like to go home
15 right now, which is fine with me, or if you want to stay a
16 reasonable period of time longer.

17 If you want to stay a reasonable period of time
18 longer, just send me out a note saying, we'd like to stay a
19 little bit longer. And that's fine, an hour and a half,
20 something like that, up to that, something like that.

21 If you decide to leave, you'll just leave right now.
22 In all events, I'm going to give you this instruction. You
23 probably know what I'm going to tell you.

24 I'm going to tell you that it's a long weekend, and
25 you have to put the case out of your mind. You can't talk

1 about it. It's dangerous to talk about it. You're the person
2 who sat in the trial, not your cousin, your uncle, your
3 brother-in-law, your next-door neighbor.

4 You know the facts. You know the law, and no one else
5 does. And it's not anyone else's business at this stage, this
6 sensitive stage. So do not discuss the case among yourselves
7 or with anyone. Do not communicate about the case. Do not do
8 any research about the case or the issues that arose in the
9 case. Do have a good Valentine's day and President's Day.

10 President's Day honors both President Washington and
11 President Lincoln, who were both born in the month of February.
12 Remember the celebration. In that event, you would be back
13 here for a start on Tuesday morning at 10:00 a.m.

14 Again, the rule is you don't start talking about the
15 case unless all 12 of you are present and you flip on the
16 light. But for now, I'm going to send you back to the jury
17 room.

18 If you send us out a note that you'd like to stay a
19 little bit longer, that's perfectly fine. If you decide to
20 leave, that's also perfectly fine. You're now a jury. So you
21 operate in tandem.

22 I'm not sure I can answer your question, but you can
23 try.

24 JUROR: Sir, Monday when we come in --

25 THE COURT: No. Tuesday.

1 JUROR: I'm sorry. Tuesday. When we come in, can we
2 immediately -- once all 12 are here, we can start discussion of
3 the case. We don't have to come back to this room?

4 THE COURT: No. You don't have to come back to this
5 room, but all 12 of you have to be present, and that's why you
6 flip on the light, so I know. If the light didn't go and it
7 got to be a little bit later and that light didn't go on, I
8 need to know what is going on.

9 All right, ladies and gentlemen. Thank you.

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1 (In open court; jury not present)

2 THE COURT: I'm going to excuse our court reporter. I
3 would say we should stay around for a little while to know if
4 there's a note, and we'll know from our marshal if they're
5 going to stay for a little while.

6 (Pause)

7 THE COURT: We got a note from our jury, and it says:
8 "Leave. Juror No. 1, 2-14-2020, 5:11 p.m.

9 We'll mark that as Exhibit 8.

10 Have a very pleasant weekend. We'll see you on
11 Tuesday morning.

12 (Adjourned to February 18, 2020, at 10:00 a.m.)
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